

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for Penalty)
Relief:)**

Zaher Azzawi, M.D.)

Case No. 800-2017-034986

**Physician's and Surgeon's)
Certificate No. A 48743)**

**Petitioner)
_____)**

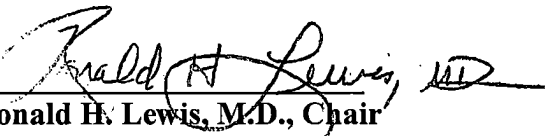
DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 8, 2018.

IT IS SO ORDERED October 9, 2018.

MEDICAL BOARD OF CALIFORNIA

By: 
**Ronald H. Lewis, M.D., Chair
Panel A**

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Penalty
Relief by:

ZAHER AZZAWI, M.D.,

Petitioner.

Case No. 8002017034986

OAH No. 2018051275

PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 13, 2018, in San Diego, California.

Raymond J. McMahon, Attorney at Law, represented, petitioner, Zaher Azzawi, M.D., who was present throughout the proceedings.

Martin W. Hagan, Deputy Attorney General, Department of Justice, appeared on behalf of the Attorney General, as authorized by Government Code section 11522.

The matter was submitted on August 13, 2018.

FACTUAL FINDINGS

1. On October 15, 1990, the board issued Physician's and Surgeon's Certificate Number A48743 to petitioner.
2. On January 15, 2013, the board's executive director filed an accusation against petitioner alleging seven causes for discipline as follows: petitioner engaged in sexual abuse or misconduct with a patient; committed gross negligence and repeated negligent acts; altered medical records; failed to maintain adequate medical records; committed acts of dishonesty or corruption in regards to alteration of medical records; and committed general unprofessional conduct.
3. The factual allegations against petitioner are summarized as follows: On July 24, 2006, patient S.A. saw petitioner for a complaint of lightheadedness. Petitioner came into

the exam room and attempted to unbutton S.A.'s shirt and remove her bra. When he had trouble he insisted that she remove them over her objection. He then had S.A. lie down and touched her lower abdomen underneath her skirt and underwear. Petitioner did not obtain permission from S.A. or explain what he was doing. He then left the exam room. S.A. then got dressed and waited for petitioner, who returned to the exam room. Once again, he told her to remove her shirt and bra. Although S.A. objected, petitioner insisted, and she complied. Petitioner had her stand in the room with her breasts fully exposed while petitioner sat on a stool. Petitioner then left the room. Petitioner's chart notes for the visit did not document a breast exam.

S.A. provided the board with a copy of uncertified medical records regarding her care and treatment by petitioner for that visit. The board requested that petitioner provide certified medical records. The certified medical records petitioner submitted to the board contained numerous additions that were not contained in the uncertified records provided by S.A.

In addition to an allegation of negligence and inadequate record keeping regarding another patient, the accusation alleged petitioner committed unprofessional conduct involving seven of his female employees. The allegations included that petitioner made inappropriate comments and body contact.

4. In a decision effective February 5, 2014, the board adopted a Stipulated Settlement and Disciplinary Order, in which petitioner admitted that the board could establish a prima facie case with respect to the charges and allegations contained in the accusation. Petitioner further agreed that if he ever petitioned for early termination of probation, all of the charges and allegations contained in the accusation would be deemed true, correct, and fully admitted by petitioner. Pursuant to the stipulated settlement, petitioner's license was revoked, the revocation was stayed, and the license was placed on probation for five years under terms and conditions that included attendance at a medical record keeping course, ethics course, professional boundaries program; a psychiatric evaluation; psychotherapy; and presence of a third party chaperone while treating female patients.

5. On July 19, 2017, petitioner filed a Petition for Penalty Relief requesting the termination of his probation. This hearing ensued.

Petitioner's Testimony

6. Petitioner's testimony is summarized as follows: Petitioner is 60 years old. He graduated from medical school in Syria in 1980. He attended residencies in internal medicine at three different hospitals in the United States and has been practicing in California since he was licensed in 1990. Since 1992 he has worked as a primary care physician and served on the Utilization Review and Quality Assurance team at Primecare Medical Group of Inland Valley (now called Inland Empire Extra Care) and has been the medical director since 2001. Except

for the disciplinary action imposed against his license, he has never had any malpractice actions or complaints regarding his medical care.

7. Petitioner acknowledged that he committed unprofessional conduct. He explained that there were some instances of touching, hugging, or "tapping a nurse's back" that did not reflect good judgment on his part, although his intentions were good. At the time, he was undergoing a divorce and had a lot of stress. He was not aware of the boundary issues at the time. He made a mistake by filling in information in a patient's chart at a later date and for examining a patient without a chaperone present. At the time, he felt that it was permissible to add information to the chart to reflect what occurred during the exam, since the information was not properly obtained. As part of his probation, petitioner completed coursework in professional boundaries, recordkeeping, and ethics, which petitioner found very useful.¹ He learned much from the classes and believes they have made him a better physician. The boundaries course was the most helpful as it caused him to reflect on how he dealt with his nurses and colleagues. He now realizes that after working with his employees over the years, his relationship became more familial and less professional, which was a mistake. Petitioner wished he had had taken a boundaries course when he first started practicing.

8. As part of his probation, petitioner underwent a psychiatric evaluation and had attended therapy for two years. Petitioner believes he has become a better doctor as a result of being on probation. However, it has been difficult for him financially. Because he is on probation, he lost a number of insurance contracts and his malpractice insurance increased. He is not permitted to supervise physician assistants or nurse practitioners for the urgent care practice, which requires him to hire a physician to work in the urgent care.

9. Petitioner testified that he has complied with all terms of his probation. He acknowledged that "some" of his quarterly reports to the board were late. He explained that he is not "computer savvy" and depended on his staff to prepare the reports. He did not know why his staff continued to be late in preparing the reports for him to sign.

10. Petitioner testified extensively about his volunteer activities in the community. For 15 years, he volunteered with his local mosque to provide medical services for those involved in the yearly pilgrimage to Mecca (Haj). For six of those years, he was the group leader. He is on the board of directors for the American Relief Fund, a non-profit organization that provides humanitarian relief to Syrian orphans and refugees. Through the organization, he was actively involved in fundraising for an orphanage on the Turkish border. He was also on the board of directors for an elementary school he helped found in Pomona. He has been active with his mosque and in the Southern California Muslim community.

¹ Petitioner submitted certificates of completion from the University of California, San Diego, Physician Assessment and Clinical Education Program, indicating he completed a professional boundaries program and medical recordkeeping course. In addition, he completed an ethics course.

Testimony of Character Witnesses

11. Bashir Kabti testified at the hearing. He met petitioner in the 1990s through the Islamic Center for Claremont. He testified about petitioner's volunteer activities in the community, including providing medical treatment during Haj, establishing an elementary school, and sitting on a council of mosques in Southern California. Mr. Kabti is the director of American Relief Fund. He testified that petitioner was instrumental in raising funds for an orphanage. During this time, the two worked closely together. Mr. Kabti said that petitioner is well-respected in the community.

12. Mohamed Z. Kattih, M.D., specializes in Physical Medicine and Rehabilitation and Pain Medicine who testified at the hearing. He has been licensed to practice medicine in California since 2004, and has been in solo practice for the past eight years. Dr. Kattih met petitioner in 2008, when petitioner recruited him to provide medical services during Haj. Dr. Kattih described the difficulties posed by millions of people on the pilgrimage and praised petitioner's abilities to provide medical care in a difficult environment. Dr. Kattih has also encountered a number of petitioner's patients locally when Dr. Kattih has provided pain management consults. He said petitioner is well-liked and he was never made aware of any issues. Dr. Kattih testified that petitioner is very well known and respected in the community. He has discussed with petitioner the circumstances surrounding his prior discipline after Dr. Kattih read the board's decision on the internet. Dr. Kattih said petitioner expressed remorse, and Dr. Kattih believes petitioner has learned a lot from what he has gone through. Dr. Kattih believes petitioner is a good doctor.

Professional References

13. Petitioner submitted a letter from Karthik Thenkondar, M.D., dated February 1, 2017, which stated the following in its entirety:

It was a pleasure to know Dr. Zaher Azzawi for the past 5 years. Since he has been on probation he always demonstrated professionalism and courtesy towards patients, staff and colleagues. He has an excellent medical knowledge and has passion for his patients. I strongly recommend him.

14. Petitioner submitted a letter from Asif Siddiq, M.D., dated February 1, 2017, which stated the following in its entirety:

I have been knowing [sic] Dr. Zaher Azzawi for the last four years. Since he has been on probation by the Medical Board of California, he has been conducting himself in very professional ways. He has been excellent with staff and physicians. Dr. Azzawi has also excellent patient care. I recommend him highly.

The Board's Probation Report

15. Letitia Robinson, a research program specialist with the board's probation unit, prepared a report dated April 24, 2018, in response to the petition. The report noted that the board's probation unit issued a non-compliance letter on April 26, 2017, for petitioner's failure to provide his 2017 first quarter report, which was due on April 10, 2017. Additionally, petitioner submitted late² quarterly reports three times in 2014, three times in 2015, all four times in 2016, all four times in 2017, and for the first quarter of 2018. Thus, during his entire probation period, petitioner has only twice submitted his reports timely.

16. Ms. Robinson conducted telephone interviews with both of petitioner's professional references, Dr. Thenkondar and Dr. Siddiq, who submitted recommendations in support of the petition. According to the report, Dr. Thenkondar met petitioner at Inland Empire Extra Care, where petitioner is Dr. Thenkondar's boss. Dr. Thenkondar stated that he had not reviewed any of petitioner's disciplinary documents but had heard rumors from other staff regarding sexual harassment. Dr. Thenkondar thought that reviewing the documents might change his recommendation, so Ms. Robinson sent him the documents to review. In a follow-up telephone call, Dr. Thenkondar said that his opinion of petitioner had changed, and he believed that petitioner should serve his full probation.

17. Dr. Siddiq also works for petitioner at Inland Empire Extra Care and has known petitioner for five years. Dr. Siddiq had also not seen the disciplinary documents but had heard from the office manager about the discipline. Dr. Siddiq said that petitioner was professional, courteous, and a good physician. He has never observed any inappropriate conduct by petitioner. Ms. Robinson also sent Dr. Siddiq the documents for him to review. After reviewing the documents, Dr. Siddiq continued to endorse petitioner's request to terminate his probation.

The Attorney General's Position

18. The Deputy Attorney General opposed early termination of probation. He argued that because Dr. Thenkondar rescinded his recommendation after reviewing the disciplinary documents, petitioner has not satisfied the statutory requirements of Business and Professions Code section 2307, subdivision (c). Alternatively, he argued that petitioner has not met his burden of proving his probation should be terminated early.

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² Under the terms of his probation, petitioner is required to submit quarterly declarations within 10 days after the end of the preceding quarter. The late declarations petitioner submitted ranged from being several days to over a month late.

LEGAL CONCLUSIONS

1. The burden rests on a petitioner to prove that he has rehabilitated himself and is entitled to have his license fully restored. (*Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence. (*Housman v. Bd. of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

2. Under Business and Professions Code section 2307, subdivision (c), the petition must be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed. Subdivision (e) provides that the board may consider "all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability."

3. While a candid admission of misconduct and full acknowledgment of wrongdoing may be a necessary step in the rehabilitation process, it is only a first step. A truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he is once again fit to practice. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.)

4. Petitioner has approximately five months remaining of his five-year probation. He completed all terms and conditions of his probation up to this point. However, his probationary period has not been unblemished. The terms of his probation required him to submit quarterly reports within 10 days of the start of a new quarter. Petitioner submitted two timely reports over the course of four years. Although the reports he submitted ranged in their tardiness from several days to over a month, petitioner's inability to timely comply with this straightforward requirement cannot be ignored.

Petitioner's professional reference letters were superficial, and provided little insight into petitioner's practice or actions since being placed on probation. They were both written by subordinates, neither of whom was familiar with the specific reasons for petitioner's discipline when they wrote their recommendations. Indeed, Dr. Thenkondar apparently told the board's representative that after having read the disciplinary documents he believed petitioner should complete the full term of his probation. Considering that the disciplinary action in this matter directly involved his practice and work environment, it would be expected that his professional references would provide more insight into the changes petitioner has made in his practice and recordkeeping.


Petitioner presented extensive evidence regarding his volunteer activities and service to the community. He is applauded for these efforts; but it is only one component in evaluating his rehabilitation. The accusation that resulted in petitioner's discipline indicated extensive problems with the way petitioner conducted himself in the workplace and with a female patient.

Ultimately, there was an absence of clear and convincing evidence to establish that petitioner has been fully rehabilitated such that his probation should be terminated early.³

ORDER

The application of petitioner, Zaher Azzawi, M.D., for early termination of probation is denied.

DATED: September 10, 2018

DocuSigned by:

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ADAM L. BERG
Administrative Law Judge
Office of Administrative Hearings

³ Because it is found that petitioner did not meet his burden of proof, the issue of whether Dr. Thenkondar's apparent retraction of his recommendation affected petitioner's compliance with Business and Professions Code section 2307, subdivision (c), need not be considered.